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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,028	10/22/2003	James Russell Curtis	200314220-1	5010

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FORT COLLINS, CO 80527-2400

EXAMINER
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DAO, THUY CHAN

ART UNIT	PAPER NUMBER
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2192

MAIL DATE	DELIVERY MODE
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11/13/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/691,028

Applicant(s)

CURTIS ET AL.

Examiner

Thuy Dao

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-6, and 8-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-6 and 8-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Applicant's submission filed on September 15, 2007 has been entered.

2. Claims 1, 3-6, and 8-10 have been examined.

### **Response to Amendments**

3. Per Applicants' request, claims 1 and 6 have been amended.

4. The objection to claim 6 is withdrawn in view of Applicants' amendments.

### **Response to Arguments**

5. Applicants' arguments have been considered but are moot in view of the new ground(s) of rejection.

### **Claim Rejections – 35 USC § 103**

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 3-6, and 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Publication No. 2004/0098421 A1 to Peng (art made of record, hereinafter "Peng") in view of US Patent No. 6,763,403 to Cheng et al. (art made of record, hereinafter "Cheng").

**Claim 1:**

Peng discloses a *method comprising:*

*launching an application on a user system (e.g., FIG. 1, [0022-0023]);*  
*tracking usage of said application so as to generate usage data on said*  
*user system (e.g., FIG. 2, [0028-0030]; [0036-0039]);*  
*accessing an update site from said user system (e.g., [0034-0037]);*  
*transferring said usage data from said user system to said update site*  
*(e.g., [0037-0040]; FIG. 2, [0028-0033]);*  
*said update site prioritizing updates for said application at least in part*  
*as a function of said usage data (e.g., FIG. 3, [0041-0044]; [0060]; FIG. 5, [0052-*  
*0053]); and*  
*said update site notifying a user said updates as prioritized in said*  
*prioritizing step (e.g., [0017-0019]; [0037]; FIG. 3, [0041-0044]).*

Peng does not explicitly disclose *said update site presenting to a user a list of said updates.*

However, in an analogous art, Cheng further discloses *said update site presenting to a user a list of said updates* (e.g., FIG. 4, col.8: 1-47; FIG. 2, blocks 201-203 and 206, col.7: 16-43).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Cheng's teaching into Peng's teaching. One would have been motivated to do so to identify software updates to the user and determine the appropriated software updates as suggested by Cheng (e.g., col.3: 44-67).

**Claim 3:**

The rejection of claim 1 is incorporated. Peng also discloses *said user selects one or more of said updates for said application* (e.g., FIG. 1, [0022-0023], Upgrade Client 126, Upgrade File 118, New File 152).

**Claim 4:**

The rejection of claim 3 is incorporated. Peng also discloses *said selected ones of said updates are installed so as to modify said application* (e.g., [0017-0019]).

**Claim 5:**

The rejection of claim 1 is incorporated. Peng also discloses *further development of said application is directed in part as a function of said usage data* (e.g., [0014]; [0049-0052]).

**Claim 6:**

Peng discloses *a software program set on computer readable media, said software program set comprising:*

*a usage data evaluator for receiving and evaluating raw usage data received provided by a user computer system* (e.g., FIG. 2, [0028-0030]; [0036-0039]);

*regarding a version of a software application installed thereon* (e.g., FIG. 1, [0022-0023]),

*said usage data evaluator providing evaluated usage data* (e.g., [0034-0037]; [0028-0033]);

*an update prioritizer for prioritizing updates available for said version at least in part as a function of said evaluated usage data* (e.g., FIG. 3, [0041-0044]; [0060]; FIG. 5, [0052-0053]);

*a web interface for communicating with said user computer system via a browser on said user system as to notify said updates as prioritized by said prioritizer* (e.g., [0017-0019]; [0037]; FIG. 3, [0041-0044]).

Peng does not explicitly disclose *presenting to a user a list of said updates*.

However, in an analogous art, Cheng further discloses *a web interface via a browser on said user system so as to present to a user a list of said updates* (e.g., FIG. 4, col.8: 1-47; FIG. 2, blocks 201-203 and 206, col.7: 16-43).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to combine Cheng's teaching into Peng's teaching. One would have been motivated to do so to identify software updates to the user and determine the appropriated software updates as suggested by Cheng (e.g., col.3: 44-67).

**Claim 8:**

The rejection of claim 6 is incorporated. Peng also discloses *said web interface specifies, for at least some of said updates, advantages over said version of said application* (e.g., [0003-0008]).

**Claim 9:**

The rejection of claim 6 is incorporated. Peng also discloses *a usage-tracking module installed on said user computer system* (e.g., [0038-0040]).

**Claim 10:**

The rejection of claim 9 is incorporated. Peng also discloses *said usage-tracking module is integrated with said version of said application* (e.g., [0018-0020]).

**Conclusion**

8. Any inquiry concerning this communication should be directed to examiner Thuy Dao (Twee), whose telephone is (571) 272 8570. The examiner can normally be reached on every Tuesday, Thursday, and Friday from 6:00AM to 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q. Dam, can be reached at (571) 272 3695.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273 8300.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the TC 2100 Group receptionist whose telephone number is (571) 272 2100.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

T. Dao



TUAN DAM  
SUPERVISORY PATENT EXAMINER